

TORGAN & COOPER, P.C.

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Attorneys for Claimant DAVID BERNSTEIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN THE MATTER OF THE COMPLAINT,

10 Civ. 7610 (NRB)

:
OF

IVAN GOODSTEIN, as owner of a 2009
YAMAHA Personal Watercraft motor vessel,
for exoneration from or limitation
of liability,

:
**DEFENDANT/CLAIMANT
DAVID BERNSTEIN'S ANSWER
TO COMPLAINT AND DEMAND
FOR JURY TRIAL**

Petitioner. :
-----x

Claimant/Defendant, DAVID BERNSTEIN, by his attorneys, TORGAN & COOPER, P.C., as and for his Answer to Petitioner's Complaint, alleges upon information and belief as follows:

The allegations contained in paragraph 1 of the Complaint are conclusions of law properly resolvable by the Court and accordingly, are denied.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint.

Admits that on or about July 3, 2010, Claimant/Defendant sustained serious and permanent personal injuries, and except as so admitted, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint.

Denies the allegations contained in paragraph 5 of the Complaint.

Denies the allegations contained in paragraph 6 of the Complaint.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint.

The allegations contained in paragraph 8 of the Complaint are conclusions of law properly resolvable by the Court and accordingly, are denied.

Denies the allegations contained in paragraph 9 of the Complaint.

Denies the allegations contained in paragraph 10 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The within action should be dismissed as a result of Petitioner/Plaintiff's failure to comply with the terms of this Court's prior order regarding publication and notice to Claimant/Defendant.

THIRD AFFIRMATIVE DEFENSE

The incident described in the Complaint occurred within the privity and/or knowledge of the vessel owner.

FOURTH AFFIRMATIVE DEFENSE

The Personal Watercraft, referred to in the Complaint, its appurtenances, equipment and/or crew, were unseaworthy.

FIFTH AFFIRMATIVE DEFENSE

The Ad Interim Stipulation filed by plaintiff/petitioner herein is insufficient and should be increased pursuant to Supplemental Admiralty Rule F(7).

SIXTH AFFIRMATIVE DEFENSE

As a sole claimant, claimant/defendant DAVID BERNSTEIN is entitled to pursue his action in any court of his choice before a jury.

WHEREFORE, Claimant/Defendant DAVID BERNSTEIN demands that the Complaint be dismissed; that his right to a trial by jury be preserved with respect to all claims asserted by Complainant IVAN GOODSTEIN; that the stay issued by this Court be dissolved and Claimant DAVID BERNSTEIN be permitted to proceed with an action in a court of his choosing before a jury; that Claimant DAVID BERNSTEIN be awarded pre-judgment interest and costs of suit; that plaintiff in limitation's right to exoneration and/or limitation of liability be denied; and/or that Claimant DAVID BERNSTEIN have such other, further and different relief as to the Court seems just and proper.

Dated: New York, New York
November 18, 2010

Respectfully submitted,

TORGAN & COOPER, P.C.

/s/ Evan Torgan
By: Evan Torgan (ET-2626)
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TO: **Via ECF**
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